PART SIX

PART SIX

COMMUNITY RULES / LEASE AGREEMENTS / ADDENDUM FOR CRIME FREE HOUSING / SECTION 8 INFORMATION

LEASES

Property managers should routinely have their leases reviewed by their attorneys to insure that they remain current and accurate. As federal and state laws change and court decisions are issued, some aspects of your current "standard" leases may become outdated. This could then affect your options should a lease violation or other incident occur which would possibly have you considering an eviction of the tenant. You may wish to review the following points with your attorney or management company and if needed consider revising or adding to your current lease or lease addendum.

A. Subleasing

Subleasing should not be permitted without authorization of management and then only upon completion of the applicant screening process. The person(s) who wish to sublease an apartment should receive the same approval as a standard tenant.

B. Unit Occupancy

Only those people noted on the lease may occupy the rental unit. Community rules governing residents should specify the length a guest may visit or stay and under what circumstances (length or number of guests) that management permission should be obtained. Any violation of this could constitute a lease violation allowing you to serve notice to terminate the lease agreement if the situation is not resolved. This is done to prevent your tenants from allowing others to "move-in" to your community without your knowledge. You may even wish to take a "family picture" (Polaroid type) of those people noted on the lease and authorized to occupy the unit. You can also explain the photo will be kept in the rental file for such instances as issuing a spare key in the event the tenant is locked out. The management can then insure that entry is not granted to unauthorized people for the security of the residents and their property.

C. Inspecting the Rental Unit

Prior to move-in and prior to move-out you and your tenant showed jointly inspect the unit for damage. A sample check list is included in the "Renters Handbook" from Prairie State Legal Services which is included as a supplement at the end of Chapter 11 of this workbook.

Additionally you should consider including an inspection clause in your lease. Such an annual inspection should be done mid-way through the annual lease. Inspecting twice a year would provide you the opportunity to check the unit four months and then eight months into the lease. The purpose of such an inspection should include changing furnace filters and smoke detector batteries as well as a brief visual inspection of plumbing and other infrastructure. The purpose is NOT to be invasive or disturb your tenant's privacy.

However, by inspecting you may also discover damage or other problems *prior* to the tenant moving (or skipping) out and prior to a call from the police.

An inspection policy could also help you find a good resident. Do you think a gang member or Meth lab operator will want to rent from you if they know you plan on inspecting the unit?

When placing an inspection clause into your lease, provide a specific time-frame for "notice of entry". By stating you will provide a five-day or seven-day notice prior to inspection, you can avoid an argument of what is a "reasonable" notice. If the tenant fails to provide you access, issue a 10-day notice for lease violation. If they continue to refuse access, you mst decide if you will "turn the other cheek" and wonder what they are doing with *YOUR* property or will you decide to initiate the eviction process. You should ask your self, "Why won't they let me in"?

You may wish to consider a clause indicating that if the tenant causes housing, building, zoning or other local municipal code violations, which will constitute a lease violation. This then provides you the ability to initiate the eviction process if you feel that will be in your best interest to resolve the problem.

D. Drugs and/or Criminal Activity

All prospective tenants, before leasing, should have a clear understanding that **drug or criminal activity related to the unit, it's occupants, or guests <u>will not be tolerated</u>.** This should be addressed in the community rules and even more importantly in a signed Crime Free or Drug Free Lease Addendum.

E. Nuisance Complaints

Reducing the opportunity for criminal activity is not the only goal of this program. Nuisance situations often cause disruptions to the quality of life within a multi-family housing community. Residents should not unduly or repeatedly disturb their neighbors. Again as part of the lease, an addendum, or in the community rules, you should clearly spell out what constitutes a violation. A certain number or type of nuisance complaints within a certain period of time (clearly specified) would constitute a lease violation and thus be grounds to serve a 10-day notice of termination. Additionally tenants should understand that they would be held responsible for their own conduct, the conduct of their children and of their guests while on or near the property. You may also suggest to your tenants that they should contact the police for assistance should dangerous or illegal activities occur that is out of their control.

The Illinois Supreme Court has ruled that property owners/managers may ban non-tenants from their property. The Village of Schaumburg has a Trespass / Loitering Ordinance that provides apartment communities and condo / homeowners associations to enter into an enforcement agreement. Property managers can also enter into an agreement with the police department to ban and enforce open consumption of alcohol in the public areas of your property (such as parking lots and outside of buildings). Information on how to utilize both of these ordinances is included as supplement at the end of this chapter.

MAKING RULES

Property owners or managers may choose to develop a booklet that lists guidelines for expected behavior, restrictions on excessive noise or nuisance violations, and other

matters that are unique to your property and facilities. If your rental unit is part of a condo association you should provide the tenant with a copy of the association rules and regulations and inform them of potential consequences for violating the rules. These items should be explained and the applicant may be asked to sign an addendum (or have it clearly noted in the rental agreement itself) indicating that community rules will be followed. If such groundwork is pepared, then rules violations could constitute a lease violation and serve as grounds to issue a 10-day notice of lease termination. As with all such matters, you should obtain legal assistance in reviewing and developing any such written materials prior to implementing them. Lastly, you should routinely review all materials and make necessary revisions to keep your paperwork "up to date".

SECTION 8 – SUBSIDIZED HOUSING

One of the most misunderstood and confusing aspects of rental housing is the Federal Subsidized – Section 8 Program. Unfortunately, the name "Section 8" has come to be associated with criminal activity. There are many wonderful hard working people that require subsidized housing. You can turn down a Section 8 applicant like any other applicant if they don't meet your screening criteria. You are allowed and encouraged to screen all applicants (including those on Section 8). Recipients of Section 8 vouchers have been screened by HUD for financial status only, not necessarily worthiness as a "good" tenant. Crime Free Multi-Housing is not anti-minority, anti-low income, or anti-Section 8. The program is as simple as the name states, Crime Free. We ask you the rental property owner/manager to provide and foster as much of a crime free property as possible and we ask the rental resident to live a crime free life style. A supplement on Section Myths and Facts is located at the end of this chapter.

CRIME FREE LEASE ADDENDUM

Such an addendum, when signed by the tenant, makes criminal or drug activity a LEASE VIOLATION in addition to a police matter. You can then terminate a lease based on drug and criminal activity. Evictions based on the Crime Free Lease Addendum have been upheld (approved) by the United States Supreme Court. Information on that case (HUD v. Rucker) is included as a supplement to this chapter immediately following the lease addendum samples. The following pages have several samples of a lease addendum for rental apartments, houses, and condos.

LEASE ADDENDUM FOR CRIME FREE HOUSING

In consideration of the execution of a lease of the dwelling unit identified in the lease, Lessee and Lessor agree as follows:

1. Lessee, any member of the lessee's household, or a guest or other person under the lessee's control shall not engage in criminal activity, including drug-related criminal activity, on or near the property premise. "Drug-related criminal activity" means the illegal manufacture, sale distribution, use, or possession with intent to manufacture, sell, distribute, or use a controlled substance (as defined in section 102 Of the Controlled Substance Act (21 U.S.C 812).
2. Lessee or members of the lessee's household or a guest or other person under the lessee's control shall not engage in any act intended to facilitate criminal activity, including drug-related criminal activity, regardless of whether the individual engaging in such activity is a member of the household or guest.
3. Lessee or members of the household will not permit the dwelling unit to be used for, or to facilitate, criminal activity, including drug-related criminal activity, regardless of whether the individual engaging in such activity is a member of the household or a guest.
4. Lessee or member of the household will not engage in the manufacture, sale, possession or distribution of illegal drugs at any location whether on or near property, premises or otherwise.
5. Lessee, any member of the lessee's household, or guest or other person under the lessee's control, shall not engage in acts of violence or threats of violence, including but not limited to, the unlawful discharge of firearms, on or near property premises.
6. VIOLATION OF THE ABOVE PROVISIONS SHALL BE A MATERIAL VIOLATION OF THE LEASE AND GOOD CAUSE FOR TERMINATION OF TENANCY. A single violation of the provisions of the addendum shall be deemed a serious violation and material noncompliance with the lease. It is understood and agreed that a single violation shall be good cause for termination of lease, unless otherwise provided by law. Proof of violation shall not require criminal conviction, but shall be by a preponderance of the evidence.
7. In case of conflict between the provisions of this addendum and any other provision of the lease, the provisions of this addendum shall govern.
8. This lease addendum is incorporated into the lease between Owner's agent and lessee.

_____

Location of Property

_____ _____ _____

Lessee Date Agent

_____ _____ _____

Lessee Date Agent

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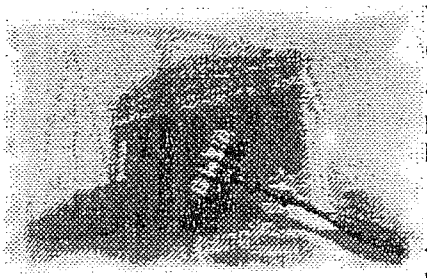
Supreme Court OKs using evictions in public housing to fight drugs

March 26, 2002 Posted: 12:57 PM EST (1757 GMT)



WASHINGTON (AP) -- The Supreme Court ruled Tuesday that government agencies can use aggressive eviction policies to get rid of drug users in public housing.

Justices, without dissent, said they had no problem with a federal law that allows entire families to be evicted from public housing for the drug use by one member.

The ruling is a relief for housing leaders, who argued that without such tools drug problems would worsen in public housing.

The losers were four elderly California tenants who received eviction notices. They challenged the zero-tolerance policy for drugs in federally subsidized housing and won in lower courts.

Justices dismissed the tenants arguments' that they should be allowed to avoid eviction by showing that they were unaware of wrongdoing.

Chief Justice William H. Rehnquist wrote that the government, as a landlord, can control activities of its tenants. He said the "one-strike" law, passed in 1988 amid complaints about crime in public housing, was Congress' response to drug problems.

The ruling affects anyone who lives in public

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housing. Senior citizens groups argued that the elderly would be hurt the most. More than 1.7 million families headed by people over age 61 live in government-subsidized housing.

"It is not absurd that a local housing authority may sometimes evict a tenant who had no knowledge of drug-related activity," Rehnquist wrote.

He said that even if tenants were unaware of the drug use, they could still be held responsible for not controlling narcotics crime of family members.

The residents in this case were from Oakland, California, but public housing groups nationwide have followed the case. Similar lawsuits are pending in other courts.

RESOURCES

The Opinion: Dept. of Housing and Urban Development v. Rucker (FindLaw document)

Supreme Court reversed a decision by the 9th U.S. Circuit Court of Appeals in favor of the California tenants, including 63-year-old Pearlie Rucker, whose mentally disabled daughter was caught with cocaine three blocks from the apartment she shared with her mother and other family members.

When the case was argued before the court last month, some justices seemed sympathetic to the senior citizens. But they agreed that the law allowed their evictions.

"Any drug-related activity engaged in by the specified persons is grounds for termination, not just drug-related activity that the tenant knew, or should have known, about," Rehnquist wrote.

Justice Stephen Breyer did not take part in the ruling.

The cases are Department of Housing and Urban Development v. Rucker, 00-1770, and Oakland Housing Authority v. Rucker, 00-1781.

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Court Rules Crime-Free Addendum Constitutionally Enforceable

On Feb. 19, 2002, in a set of four public housing cases, the United States
Supreme Court heard arguments concerning the language of the crime-free addendum and rendered a decision on March 26, 2002. The Court ruled that eviction procedures based on the language of the crime free addendum is contractually and constitutionally reasonable to protect good tenants from the criminal acts of other tenants, their occupants and quests.

The cases involved four longtime leaseholders in Oakland, Calif., evicted
from their units as a result of their occupants' involvement in criminal, drug-related activities on and off the property. The residents claimed they had no knowledge of the criminal activity and, therefore, not responsible or subject to eviction. The lower court held that zero-tolerance policies for criminal activity were reasonable and constitutional if the resident gives access to an occupant or guest who is, or becomes, involved in criminal activity. The ruling was appealed several times before being accepted and heard by the United States Supreme Court.

Although the case dealt with federally assisted low-income public housing, the Court made it clear that the rational behind its decision dealt with landlord-tenant relationships concerning the rights of other residents to safe and healthy living conditions. The International Crime-Free Association and its Arizona Crime-Free Chapter have been teaching the same rational for 10 years. The following are actual excerpts of the Court's ruling. Since this is such a monumental decision for good landlords, good residents and crime-free associations nationwide, it is important that you actually see some of the language:

* "Public housing agencies [management] shall utilize leases which ⁘ provide
that any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant [tenant], any member of the tenant's household, or any guest or other person under the tenant's control shall be cause for termination of tenancy."

* " ⁘ obligates the tenants to assure that the tenant, any member of the household, a guest or another person under the tenant's control, shall not engage in ⁘ any drug-related activity on or near the premises. [Tenants] sign an agreement stating that the tenant understands that if I or any

member of my household or a guest should violate this lease provision, my tenancy may be terminated and I may be evicted.

* "The agency [management] made clear that local public housing authority's
[management's] discretion to evict for drug-related activities includes those situations in which the tenant did not know, could not foresee, or could not control behavior of other occupants of the unit."

* "[The Crime-Free Addendum] unambiguously requires lease terms that vest local public housing authorities [managers] with the discretion to evict tenants for the drug-related activities of household members and guests, whether or not the tenant knew, or should have known, about the activity."

* "That this is so seems evident from the plain language of the statute [Crime-Free Addendum] it provides that each public housing authority [manager] shall utilize leases which ⁘ provide that ⁘ any drug-related activity on or off such premises, engaged in by a public housing tenant [tenant], any member of tenant's household or any guest or other person under the tenant's control, shall be cause for termination of tenancy."

* "The term 'any' [is used] to modify drug-related criminal activity [which]
precludes any knowledge requirement and the word any has an expansive meaning that is one or some indiscriminately of whatever kind."

* "By control, the statute [Crime-Free Addendum] means control in the sense
that the tenant has permitted access to the premises. Implicit in the term 'household member' or 'guest' is that access to the premises has been granted by the tenant. Thus the plain language of the statute [Crime-Free Addendum] requires leases that grant public housing authorities [managers] the discretion to terminate tenancy without tenant's knowledge of drug-related criminal activity."

* "Such 'no fault' eviction is a common 'incident of tenant responsibility
under normal landlord-tenant law and practice'. Strict liability maximizes deterrent and easies enforcement difficulties."

* "[For] obvious reasons ⁘ regardless of knowledge, a tenant who 'cannot control drug crime or other criminal activities by a household member which threaten health or safety of other residents, is a threat to other residents and the project [community]. With drugs leading to 'murders, muggings and other forms of violence against tenants,' and to the 'deterioration of the physical environment that requires substantial government [owner] expenditures, it was reasonable for Congress [the contract] to permit no-fault evictions in order to 'provide public and other federally assisted low-income housing rentals [rental units] that are decent, safe and free from illegal drugs."

* "The government [owner] is not intending to criminally punish or civilly relegate respondents [tenants] as other members of the general populous. It is instead acting as a landlord of property that it owns invoking a clause in a lease to which respondents [tenants] have agreed and which Congress [owner] has expressly required."

* "It is entirely reasonable to think that the Government, when seeking to transfer private property to itself in a forfeiture proceeding, should be subject to an 'innocent owner defense,' while it should not be when acting as a landlord in a public housing project. The forfeiture provision shows that Congress knew exactly how to provide an 'innocent owner' [tenant] defense. It did not provide one in section 1437d(l)(6) [crime free addendum language].

The important part of this ruling is that the rationale regarding a landlord-tenant relationship has been held constitutionally reasonable. When a landlord and renter enter into a contract that states the resident is responsible for criminal activities of his or her occupants and guests on a civil basis, the contract will now have some teeth. The ruling now defines access as whether or not the renter or occupant gave permission for a guest or other individual to enter the premises.

The Court made it clear that the so-called "innocent tenant" defense does not exist. Management has a right and a duty to rid the community of criminal activity on or off the property when such activity is perpetrated by residents, their occupants or their guests involving threats to health, safety or quiet enjoyment of the other renters at the property.

Additionally, this ruling is in direct conflict and supercedes the Arizona Residential Landlord and Tenant Act (ARLTA) concerning guests. ARLTA states that:

For the purposes of this chapter, the tenant shall be held responsible for
the actions of the tenant's guests that violate the lease agreement or rules or regulations of the landlord if the tenant could have reasonable be expected to be aware that such actions might occur and did not attempt to prevent those actions to the best of their ability.

Now, bad residents are simply responsible for the actions of their guests,
regardless of whether or not they knew about it.

ON A NATIONAL SCALE THIS RULING REALLY HITS HOME BECAUSE THE RATIONALE OF THE COURT IS DIRECTLY ON POINT REGARDING CRIME OF ANY KIND - THE ARGUMENTS ARE THE SAME WHETHER THE CRIMINAL ACTIVITY IS DRUG RELATED OR OTHER SERIOUS CRIME THAT HAS A BEARING ON THREATS TO HEALTH OR SAFETY OF OTHER TENANTS IN THE COMMUNITY. RESPONSIBILITY IS BACK WHERE IT BELONGS. WE JUST NEED TO MAKE SURE THAT BEFORE AN IMMEDIATE TERMINATION OF A LEASE TAKES PLACE THAT AN ADEQUATE INVESTIGATION IS PERFORMED BY MANAGEMENT TO MAKE SURE THAT THE FACTS ARE STRONG ENOUGH TO MOVE FORWARD. BUT WHAT POWERFUL AMMUNITION. WE MUST ALWAYS REMEMBER THAT EVICTING SOMEONE DEALS WITH THEIR MOST IMPORTANT ASSET TO THE FAMILY - THEIR HOME. WE WANT TO DO ALL WE CAN TO HELP MANGERS REALIZE THEIR DUTY NOT TO ABUSE THIS WEAPON/SHIELD AND THAT PRIOR TO EVICTION ALL THE EVIDENCE IS IN ORDER AND CONSISTENT WITH THE ALLEGATIONS.

GOOD LUCK TO ALL AND I AM LOOKING FORWARD TO SEEING YOU SOON IN BEAUTIFUL SAVANNAH. DENNY DOBBINS

Jump to: [Opinion]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT *v.* RUCKER *etal.*

certiorari to the united states court of appeals for the ninth circuit

No. 001770. Argued February 19, 2002Decided March 26, 2002*

Title 42 U.S. C. 1437d(*l*)(6) provides that each public housing agency shall utilize leases provid[ing] that any drug-related criminal activity on or off [federally assisted low-income housing] premises, engaged in by a public housing tenant, any member of the tenants household, or any guest or other person under the tenants control, shall be cause for termination of tenancy. Respondents are four such tenants of the Oakland Housing Authority (OHA). Paragraph 9(m) of their leases obligates them to assure that the tenant, any member of the household, a guest, or another person under the tenants control, shall not engage in any drug-related criminal activity on or near the premises. Pursuant to United States Department of Housing and Urban Development (HUD) regulations authorizing local public housing authorities to evict for drug-related activity even if the tenant did not know, could not foresee, or could not control behavior by other occupants, OHA instituted state-court eviction proceedings against respondents, alleging violations of lease paragraph 9(m) by a member of each tenants household or a guest. Respondents filed federal actions against HUD, OHA, and OHAs director, arguing that 1437d(*l*)(6) does not require lease terms authorizing the eviction of so-called innocent tenants, and, in the alternative, that if it does, the statute is unconstitutional. The District Courts issuance of a preliminary injunction against OHA was affirmed by the en banc Ninth Circuit, which held that HUDs interpretation permitting the eviction of so-called innocent tenants is inconsistent with congressional intent and must be rejected under *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842843.

*Held:*Section 1437d(*l*)(6)s plain language unambiguously requires lease terms that give local public housing authorities the discretion to terminate the lease of a tenant when a member of the household or a guest engages in drug-related activity, regardless of whether the tenant knew, or should have

known, of the drug-related activity. Congress decision not to impose any qualification in the statute, combined with its use of the term any to modify drug-related criminal activity, precludes any knowledge requirement. See *United States* v. *Monsanto*, 491 U.S. 600, 609. Because any has an expansive meaning*i.e.*, one or some indiscriminately of whatever kind, *United States* v. *Gonzales*, 520 U.S. 1, 5*any* drug-related activity engaged in by the specified persons is grounds for termination, not just drug-related activity that the tenant knew, or should have known, about. The Ninth Circuits ruling that under the tenants control modifies not just other person, but also member of the tenants household and guest, runs counter to basic grammar rules and would result in a nonsensical reading. Rather, HUD offers a convincing explanation for the grammatical imperative that under the tenants control modifies only other person: By control, the statute means control in the sense that the tenant has permitted access to the premises. Implicit in the terms household member or guest is that access to the premises has been granted by the tenant. Section 1437d(*l*)(6)s unambiguous text is reinforced by comparing it to 21 U.S.C. 881(a)(7), which subjects all leasehold interests to civil forfeiture when used to commit drug-related criminal activities, but expressly exempts tenants who had no knowledge of the activity, thereby demonstrating that Congress knows exactly how to provide an innocent owner defense. It did not provide one in 1437d(*l*)(6). Given that Congress has directly spoken to the precise question at issue, *Chevron, supra*, at 842, other considerations with which the Ninth Circuit attempted to bolster its holding are unavailing, including the legislative history, the erroneous conclusion that the plain reading of the statute leads to absurd results, the canon of constitutional avoidance, and reliance on inapposite decisions of this Court to cast doubt on 1437d(*l*)(6)s constitutionality under the Due Process Clause. Pp.411.

237 F.3d 1113, reversed and remanded.

Rehnquist, C.J., delivered the opinion of the Court, in which all other Members joined, except *Breyer, J.*, who took no part in the consideration or decision of the cases.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PETITIONER

001770 *v.*

PEARLIE RUCKER *etal.*

OAKLAND HOUSING AUTHORITY, *etal.*, PETITIONERS

001781 *v.*

PEARLIE RUCKER *etal.*

on writs of certiorari to the united states court of appeals for the ninth circuit

[March 26, 2002]

Chief Justice Rehnquist delivered the opinion of the Court.

With drug dealers increasingly imposing a reign of terror on public and other federally assisted low-income housing tenants, Congress passed the Anti-Drug Abuse Act of 1988. 5122, 102 Stat. 4301, 42 U.S.C. 11901(3) (1994 ed.). The Act, as later amended, provides that each public housing agency shall utilize leases which provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on

or off such premises, engaged in by a public housing tenant, any member of the tenants household, or any guest or other person under the tenants control, shall be cause for termination of tenancy. 42 U.S.C. 1437d(*l*)(6) (1994 ed., Supp. V). Petitioners say that this statute requires lease terms that allow a local public housing authority to evict a tenant when a member of the tenants household or a guest engages in drug-related criminal activity, regardless of whether the tenant knew, or had reason to know, of that activity. Respondents say it does not. We agree with petitioners.

Respondents are four public housing tenants of the Oakland Housing Authority (OHA). Paragraph 9(m) of respondents leases, tracking the language of 1437d(*l*)(6), obligates the tenants to assure that the tenant, any member of the household, a guest, or another person under the tenants control, shall not engage in [a]ny drug-related criminal activity on or near the premise[s]. App. 59. Respondents also signed an agreement stating that the tenant understand[s] that if I or any member of my household or guests should violate this lease provision, my tenancy may be terminated and I may be evicted. *Id.*, at 69.

In late 1997 and early 1998, OHA instituted eviction proceedings in state court against respondents, alleging violations of this lease provision. The complaint alleged: (1) that the respective grandsons of respondents William Lee and Barbara Hill, both of whom were listed as residents on the leases, were caught in the apartment complex parking lot smoking marijuana; (2) that the daughter of respondent Pearlie Rucker, who resides with her and is listed on the lease as a resident, was found with cocaine and a crack cocaine pipe three blocks from Ruckers apartment;[1] and (3) that on three instances within a 2-month period, respondent Herman Walkers caregiver and two others were found with cocaine in Walkers apartment. OHA had issued Walker notices of a lease violation on the first two occasions, before initiating the eviction action after the third violation.

United States Department of Housing and Urban Development (HUD) regulations administering 1437d(*l*)(6) require lease terms authorizing evictions in these circumstances. The HUD regulations closely track the statutory language,[2] and provide that [i]n deciding to evict for criminal activity, the [public housing authority] shall have discretion to consider all of the circumstances of the case. 24 CFR 966.4(*l*)(5)(i) (2001). The agency made clear that local public housing authorities discretion to evict for drug-related activity includes those situations in which [the] tenant did not know, could not foresee, or could not control behavior by other occupants of the unit. 56 Fed. Reg. 51560, 51567 (1991).

After OHA initiated the eviction proceedings in state court, respondents commenced actions against HUD, OHA, and OHAs director in UnitedStates District Court. They challenged HUDs interpretation of the statute under the Administrative Procedure Act, 5 U.S.C. 706(2)(A), arguing that 42 U.S.C. 1437d(*l*)(6) does not require lease terms authorizing the eviction of so-called innocent tenants, and, in the alternative, that if it does, then the statute is unconstitutional.[3] The District Court issued a preliminary injunction, enjoining OHA from terminating the leases of tenants pursuant to paragraph 9(m) of the Tenant Lease for drug-related criminal activity that does not occur within the tenants apartment unit when the tenant did not know of and had no reason to know of, the drug-related criminal activity. App. to Pet. for Cert. in No. 01770, pp. 165a166a.

A panel of the Court of Appeals reversed, holding that 1437d(*l*)(6) unambiguously permits the eviction of tenants who violate the lease provision, regardless of whether the tenant was personally aware of the drug activity, and that the statute is constitutional. See *Rucker* v. *Davis*, 203 F.3d 627 (CA9 2000). An en banc panel of the Court of Appeals reversed and affirmed the District Courts grant of the preliminary injunction. See *Rucker* v. *Davis*, 237 F.3d 1113 (2001). That court held that

HUDs interpretation permitting the eviction of so-called innocent tenants is inconsistent with Congressional intent and must be rejected under the first step of *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842843 (1984). 237 F.3d, at 1119.

We granted certiorari, 533 U.S. 976 (2001), 534 U.S. ___ (2001), and now reverse, holding that 42 U.S.C. 1437d(*l*)(6) unambiguously requires lease terms that vest local public housing authorities with the discretion to evict tenants for the drug-related activity of household members and guests whether or not the tenant knew, or should have known, about the activity.

That this is so seems evident from the plain language of the statute. It provides that each public housing authority shall utilize leases which provide that any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenants household, or any guest or other person under the tenants control, shall be cause for termination of tenancy. 42 U.S.C. 1437d(*l*)(6) (1994 ed., Supp. V). The en banc Court of Appeals thought the statute did not address the level of personal knowledge or fault that is required for eviction. 237 F.3d, at 1120. Yet Congress decision not to impose any qualification in the statute, combined with its use of the term any to modify drug-related criminal activity, precludes any knowledge requirement. See *United States* v. *Monsanto*, 491 U.S. 600, 609 (1989). As we have explained, the word any has an expansive meaning, that is, one or some indiscriminately of whatever kind. *United States* v. *Gonzales*, 520 U.S. 1, 5 (1997). Thus, *any* drug-related activity engaged in by the specified persons is grounds for termination, not just drug-related activity that the tenant knew, or should have known, about.

The en banc Court of Appeals also thought it possible that under the tenants control modifies not just other person, but also member of the tenants household and guest. 237 F.3d, at 1120. The court ultimately adopted this reading, concluding that the statute prohibits eviction where the tenant for a lack of knowledge or other reason, could not realistically exercise control over the conduct of a household member or guest. *Id.*, at 1126. But this interpretation runs counter to basic rules of grammar. The disjunctive or means that the qualification applies only to other person. Indeed, the view that under the tenants control modifies everything coming before it in the sentence would result in the nonsensical reading that the statute applies to a public housing tenant under the tenants control. HUD offers a convincing explanation for the grammatical imperative that under the tenants control modifies only other person: by control, the statute means control in the sense that the tenant has permitted access to the premises. 66 Fed. Reg. 28781 (2001). Implicit in the terms household member or guest is that access to the premises has been granted by the tenant. Thus, the plain language of 1437d(*l*)(6) requires leases that grant public housing authorities the discretion to terminate tenancy without regard to the tenants knowledge of the drug-related criminal activity.

Comparing 1437d(*l*)(6) to a related statutory provision reinforces the unambiguous text. The civil forfeiture statute that makes all leasehold interests subject to forfeiture when used to commit drug-related criminal activities expressly exempts tenants who had no knowledge of the activity: [N]o property shall be forfeited under this paragraph by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of the owner. 21 U.S.C. 881(a)(7) (1994 ed.). Because this forfeiture provision was amended in the same Anti-Drug Abuse Act of 1988 that created 42 U.S.C. 1437d(*l*)(6), the en banc Court of Appeals thought Congress meant them to be read consistently so that the knowledge requirement should be read into the eviction provision. 237 F.3d, at 11211122. But the two sections deal with distinctly different matters. The innocent owner defense for drug forfeiture cases was already in existence prior to 1988 as part of 21 U.S.C. 881(a)(7). All that Congress did in the 1988 Act was to add leasehold interests to the property interests that might be forfeited under the drug

statute. And if such a forfeiture action were to be brought against a leasehold interest, it would be subject to the pre-existing innocent owner defense. But 42 U.S.C. 1437(d)(1)(6), with which we deal here, is a quite different measure. It is entirely reasonable to think that the Government, when seeking to transfer private property to itself in a forfeiture proceeding, should be subject to an innocent owner defense, while it should not be when acting as a landlord in a public housing project. The forfeiture provision shows that Congress knew exactly how to provide an innocent owner defense. It did not provide one in 1437d(*l*)(6).

The en banc Court of Appeals next resorted to legislative history. The Court of Appeals correctly recognized that reference to legislative history is inappropriate when the text of the statute is unambiguous. 237 F.3d, at 1123. Given that the en banc Court of Appeals finding of textual ambiguity is wrong, see *supra*, at 46, there is no need to consult legislative history.[4]

Nor was the en banc Court of Appeals correct in concluding that this plain reading of the statute leads to absurd results.[5] The statute does not *require* the eviction of any tenant who violated the lease provision. Instead, it entrusts that decision to the local public housing authorities, who are in the best position to take account of, among other things, the degree to which the housing project suffers from rampant drug-related or violent crime, 42 U.S.C. 11901(2) (1994 ed. and Supp. V), the seriousness of the offending action, 66 Fed. Reg., at 28803, and the extent to which the leaseholder has taken all reasonable steps to prevent or mitigate the offending action, *ibid.* It is not absurd that a local housing authority may sometimes evict a tenant who had no knowledge of the drug-related activity. Such no-fault eviction is a common incident of tenant responsibility under normal landlord-tenant law and practice. 56 Fed. Reg., at 51567. Strict liability maximizes deterrence and eases enforcement difficulties. See *Pacific Mut. Life Ins. Co.* v. *Haslip*, 499 U. S. 1, 14 (1991).

And, of course, there is an obvious reason why Congress would have permitted local public housing authorities to conduct no-fault evictions: Regardless of knowledge, a tenant who cannot control drug crime, or other criminal activities by a household member which threaten health or safety of other residents, is a threat to other residents and the project. 56 Fed. Reg., at 51567. With drugs leading to murders, muggings, and other forms of violence against tenants, and to the deterioration of the physical environment that requires substantial governmental expenditures, 42 U.S.C. 11901(4) (1994 ed., Supp. V), it was reasonable for Congress to permit no-fault evictions in order to provide public and other federally assisted low-income housing that is decent, safe, and free from illegal drugs, 11901(1) (1994 ed.).

In another effort to avoid the plain meaning of the statute, the en banc Court of Appeals invoked the canon of constitutional avoidance. But that canon has no application in the absence of statutory ambiguity. *United States* v. *Oakland Cannabis Buyers Cooperative*, 532 U.S. 483, 494 (2001). Any other conclusion, while purporting to be an exercise in judicial restraint, would trench upon the legislative powers vested in Congress by Art. I, 1, of the Constitution. *United States* v. *Albertini*, 472 U.S. 675, 680 (1985). There are, moreover, no serious constitutional doubts about Congress affording local public housing authorities the discretion to conduct no-fault evictions for drug-related crime. *Reno* v. *Flores*, 507 U.S. 292, 314, n.9 (1993) (emphasis deleted).

The en banc Court of Appeals held that HUDs interpretation raise[s] serious questions under the Due Process Clause of the Fourteenth Amendment, because it permits tenants to be deprived of their property interest without any relationship to individual wrongdoing. 237 F.3d, at 11241125 (citing *Scales* v. *United States*, 367 U.S 203, 224225 (1961); *Southwestern Telegraph & Telephone Co.* v.

Danaher, 238 U.S. 482 (1915)). But both of these cases deal with the acts of government as sovereign. In *Scales*, the United States criminally charged the defendant with knowing membership in an organization that advocated the overthrow of the United States Government. In *Danaher*, an Arkansas statute forbade discrimination among customers of a telephone company. The situation in the present cases is entirely different. The government is not attempting to criminally punish or civilly regulate respondents as members of the general populace. It is instead acting as a landlord of property that it owns, invoking a clause in a lease to which respondents have agreed and which Congress has expressly required. *Scales* and *Danaher* cast no constitutional doubt on such actions.

The Court of Appeals sought to bolster its discussion of constitutional doubt by pointing to the fact that respondents have a property interest in their leasehold interest, citing *Greene* v. *Lindsey*, 456 U.S. 444 (1982). This is undoubtedly true, and *Greene* held that an effort to deprive a tenant of such a right without proper notice violated the Due Process Clause of the Fourteenth Amendment. But, in the present cases, such deprivation will occur in the state court where OHA brought the unlawful detainer action against respondents. There is no indication that notice has not been given by OHA in the past, or that it will not be given in the future. Any individual factual disputes about whether the lease provision was actually violated can, of course, be resolved in these proceedings.[6]

We hold that Congress has directly spoken to the precise question at issue. *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S., at 842. Section 1437d(*l*)(6) requires lease terms that give local public housing authorities the discretion to terminate the lease of a tenant when a member of the household or a guest engages in drug-related activity, regardless of whether the tenant knew, or should have known, of the drug-related activity.

Accordingly, the judgment of the Court of Appeals is reversed, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice Breyer took no part in the consideration or decision of these cases.

FOOTNOTES

Footnote *

Together with No. 001781, *Oakland Housing Authority etal.* v. *Rucker etal.*, also on certiorari to the same court.

FOOTNOTES

Footnote 1

In February 1998, OHA dismissed the unlawful detainer action against Rucker, after her daughter was incarcerated, and thus no longer posed a threat to other tenants.

Footnote 2

The regulations require public housing authorities (PHAs) to impose a lease obligation on tenants:

To assure that the tenant, any member of the household, a guest, or another person under the tenants control, shall not engage in:

(A) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHAs public housing premises by other residents or employees of the PHA, or

(B) Any drug-related criminal activity on or near such premises.

Any criminal activity in violation of the preceding sentence shall be cause for termination of tenancy, and for eviction from the unit. 24 CFR 966.4(f)(12)(i) (2001).

Footnote 3

Respondents Rucker and Walker also raised Americans with Disabilities Act claims that are not before this Court. And all of the respondents raised state-law claims against OHA that are not before this Court.

Footnote 4

Even if it were appropriate to look at legislative history, it would not help respondents. The en banc Court of Appeals relied on two passages from a 1990 Senate Report on a proposed amendment to the eviction provision. 237 F.3d, at 1123 (citing S.Rep. No. 101316 (1990)). But this Report was commenting on language from a Senate version of the 1990 amendment, which was never enacted. The language in the Senate version, which would have imposed a different standard of cause for eviction for drug-related crimes than the unqualified language of 1437d(*l*)(6), see 136 Cong. Rec. 15991, 16012 (1990) (reproducing S. 566, 101st Cong., 2d Sess., 521(f) and 714(a) (1990)), was rejected at Conference. See H.R. Conf. Rep. No. 101943, p. 418 (1990). And, as the dissent from the en banc decision below explained, the passages may plausibly be read as a mere suggestion about how local public housing authorities should exercise the *wide* discretion to evict tenants connected with drug-related criminal behavior that the lease provision affords them. 237 F.3d, at 1134 (Sneed, J., dissenting).

Respondents also cite language from a House Report commenting on the Civil Asset Forfeiture Reform Act of 2000, codified at 18 U.S.C. 983. Brief for Respondents 1516. For the reasons discussed *supra* at 67, legislative history concerning forfeiture provisions is not probative on the interpretation of 1437d(*l*)(6).

A 1996 amendment to 1437d(*l*)(6), enacted five years after HUD issued its interpretation of the statute, supports our holding. The 1996 amendment expanded the reach of 1437d(*l*)(6), changing the language of the lease provision from applying to activity taking place on or near the public housing premises, to activity occurring on or off the public housing premises. See Housing Opportunity Program Extension Act of 1996, 9(a)(2), 110 Stat. 836. But Congress, presumed to be aware of HUDs interpretation rejecting a knowledge requirement, made no other change to the statute. *Lorillard* v. *Pons*, 434 U.S. 575, 580 (1978).

Footnote 5

For the reasons discussed above, no-fault eviction, which is specifically authorized under 1437d(*l*)(6), does not violate 1437d(*l*)(2), which prohibits public housing authorities from including unreasonable terms and conditions [in their leases]. In addition, the general statutory provision in the latter section cannot trump the clear language of the more specific 1437d(*l*)(6). See *Green* v. *Bock Laundry Machine Co.*, 490 U.S. 504, 524526 (1989).

Footnote 6

The en banc Court of Appeals cited only the due process constitutional concern. Respondents raise two others: the First Amendment and the Excessive Fines Clause. We agree with Judge OScannlain, writing for the panel that reversed the injunction, that the statute does not raise substantial First Amendment or Excessive Fines Clause concerns. *Lyng* v. *Automobile Workers*, 485 U.S. 360 (1988), forecloses respondents claim that the eviction of unknowing tenants violates the First Amendment guarantee of freedom of association. See *Rucker* v. *Davis*, 203 F.3d 627, 647 (2000). And termination of tenancy is neither a cash nor an in-kind payment imposed by and payable to the government and therefore is not subject to analysis as an excessive fine. *Id.*, at 648.

FEDERAL SUBSIDIZED PROGRAMS

RENTAL LEASES AND EVICTION
(what you can and can't do with subsidized housing)

The Myths

I keep hearing that you have to do major changes to an unit to make it qualify for Section 8?

FALSE. All units approved for the Section 8 Program must be inspected by the PHA prior to any agreements are signed. The inspection requires that units meet minimum housing standards called "housing quality standards". These standards include (but are not limited to)

Only drug dealers and tenants who trash units are on the Section 8 Program.

FALSE. Housing Authorities and other housing entities administers the Section 8 program. They screen potential applicants for program eligibility (primarily income level). It is up to the landlord to screen residents - make sure they can pay the remainder of their rent, check rental record through previous landlords, and run all other checks the same way you would with a private renter. You are not only legally permitted to, you are expected to! Screening applicants, subsidized or not, is both your right and responsibility; you are entitled to turn down Section 8 applicants who do not meet your screening criteria and accept those who do. Also, upon initial application, most Housing Authorities requires a local criminal history report for all Section 8 applicants before checking their income eligibility.

I can't screen Section 8 residents, the Housing Authority won't let me! FALSE.

AGAIN, both HUD & the Housing Authority encourage all landlords to screen any prospective resident thoroughly. The HA only screens for program eligibility not to see if they will be a good resident for you. (see item above)

If I start accepting Section 8 for one resident, I always have to take them.

FALSE. A landlord always has the option to accept a Section 8 resident or to refuse one. If you accept a Section 8 resident this year and they move out, you are under no obligation to re-rent to a Section 8 resident.

Residents on Section 8 can't be evicted.

FALSE. This misconception arises primarily from a confusion about the types of notices that can be served on a subsidized resident. While it is true that a Section 8 lease will forbid the use of "no-cause" or "non-renewal" notices, in general, all "for-cause" notices will still apply. So, for example, if a resident is violating the terms of your lease or damaging the unit, the landlord can serve the applicable for-cause notice defined in the landlord/tenant law.

Section 8 participants are bound by the same Missouri/Kansas state and local landlord/tenant laws that govern non-subsidized rental relationships. In theory, the only difference should be the wording of the lease. However, there are instances when evictions can be more complicated with Section 8 residents. Your best approach, as with any eviction, is to speak with the Housing Authority and an experienced landlord/tenant attorney before starting the process.

If you evict a Section 8 resident for drug activity, the housing authority will simply let the same people rent again somewhere else.

FALSE. New HUD guidelines allow housing authorities to terminate assistance to residents involved in the manufacture, sale, distribution, possession, or use of illegal drugs. The "One Strike You Are Out" rule now applies to residents participating in all federally subsidized housing programs (i.e., Section 8). The same guidelines apply to residents involved in violent criminal activity. Also, new guidelines introduced in 1995 give local housing agencies expanded options for terminating program participation for such problems as repeated and serious lease violations.

HOUSING CHOICE VOUCHER PROGRAM

WHAT ARE HOUSING CHOICE VOUCHERS?

The housing choice voucher program is the federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market. Since housing assistance is provided on behalf of the family or individual, participants are able to find their own housing, including single-family homes, townhouses and apartments. The participant is free to choose any housing that meets the requirements of the program and is not limited to units located in subsidized housing projects.

Housing choice vouchers are administered locally by public housing agencies(PHAs). The PHAs receive federal funds from the U.S. Department of Housing and Urban Development (HUD) to administer the voucher program. A family that is issued a housing voucher is responsible for finding a suitable housing unit of the family's choice where the owner agrees to rent under the program. This unit may include the family's present residence. Rental units must meet minimum standards of health and safety, as determined by the PHA. A housing subsidy is paid to the landlord directly by the PHA on behalf of the participating family. The family then pays the difference between the actual rent charged by the landlord and the amount subsidized by the program. Under certain circumstances, if authorized by the PHA, a family may use its voucher to purchase a modest home.

ELIGIBILITY?

Eligibility for a housing voucher is determined by the PHA based on the total annual gross income and family size and is limited to U.S. citizens and specified categories of non-citizens who have eligible immigration status. In general, the family's income may not exceed 50% of the median income for the county or metropolitan area in which the family chooses to live. By law, a PHA must provide 75 percent of its voucher to applicants whose incomes do not exceed 30 percent of the area median income. Median income levels are published by HUD and vary by

location. The PHA serving your community can provide you with the income limits for your area and
family size.

During the application process, the PHA will collect information on family income, assets, and family composition. The PHA will verify this information with other local agencies, your employer and bank, and will use the information to determine program eligibility and the amount of the housing assistance payment.

If the PHA determines that the family is eligible, the PHA will put their name on a waiting list, unless it is able to assist them immediately. Once a name is reached on the waiting list, the PHA will contact them and issue them a housing voucher.

APPLICATION PROCESS

If an individual is interested in applying for a voucher, they need to contact their local PHA.

LOCAL PREFERENCES & WAITING LISTS

Since the demand for housing assistance often exceeds the limited resources available to HUD and the local housing agencies, long waiting periods are common. In fact, a PHA may close its waiting list when it has more families on the list than can be assisted in the near future.

PHAs may establish local preferences for selecting applicants from its waiting list. For example, PHAs may give a preference to a family who is (1) homeless or living in substandard housing, (2) paying more than 50% of its income for rent, or (3) involuntarily displaced. Families who qualify for any such local preferences move ahead of other families on the list who do not qualify for any preference. Each PHA has the discretion to establish local preferences to reflect the housing needs and priorities of its particular community.

HOUSING VOUCHERS – HOW DO THEY FUNCTION?

The housing choice voucher program places the choice of housing in the hands of the individual family. A very low-income family is selected by the PHA to participate is encouraged to consider several housing choices to secure the best housing for its needs. A housing voucher holder is advised of the unit size for which it is eligible based on family size and composition.

The housing unit selected by the family must meet an acceptable level of health and safety before the PHA can approve the unit. When the voucher holder finds a unit that it wishes to occupy and reaches an agreement with the landlord over the lease terms, the PHA must inspect the dwelling and determine that the rent requested is reasonable.

The PHA determines a payment standard that is the amount generally needed to rent a moderately-priced dwelling unit in the local housing market and that is used to calculate the amount of housing assistance a family will receive. However the payment standard does not limit but does not affect the amount of rent a landlord may charge or the family may pay. A family which receives a housing voucher can select a unit with a rent that is below or above the payment standard. The housing voucher family must pay 30% of its monthly adjusted gross income for

rent and utilities, and if the unit rent is greater than the payment standard the family is required to pay the additional amount. By law, whenever a family moves to a new unit where the rent exceeds the payment standard, the family may not pay more than 40 percent of its adjusted monthly income for rent.

THE SUBSIDY

The PHA calculates the maximum amount of housing assistance allowable. The maximum housing assistance is generally the lesser of the payment standard minus 30% of the family's monthly adjusted income or the gross rent for the unit minus 30% of monthly adjusted income

CAN I MOVE AND CONTINUE TO RECEIVE HOUSING CHOICE VOUCHER ASSISTANCE?

A family's housing needs change over time with changes in family size, job locations, and for other reasons. The housing choice voucher program is designed to allow families to move without the loss of housing assistance. Moves are permissible as long as the family notifies the PHA ahead of time, terminates its existing lease within the lease provisions, and finds acceptable alternate housing.

Under the voucher program, new voucher-holders may choose a unit anywhere in the United States if the family lived in the jurisdiction of the PHA issuing the voucher when the family applied for assistance. Those new voucher-holders not living in the jurisdiction of the PHA at the time the family applied for housing assistance must initially lease a unit within that jurisdiction for the first twelve months of assistance. A family that wishes to move to another PHA's jurisdiction
must consult with the PHA that currently administers its housing assistance to verify the procedures for moving.

ROLES – RESIDENT, LANDLORD, & HUD

Once a PHA approves an eligible family's housing unit, the family and the landlord sign a lease and, at the same time, the landlord and the PHA sign a housing assistance payments contract that runs for the same term as the lease. This means that everyone -- tenant, landlord and PHA -- has obligations and responsibilities under the voucher program.

Tenant's Obligations: When a family selects a housing unit, and the PHA approves the unit and lease, the family signs a lease with the landlord for at least one year. The tenant may be required to pay a security deposit to the landlord. After the first year the landlord may initiate a new lease or allow the family to remain in the unit on a month-to-month lease.

When the family is settled in a new home, the family is expected to comply with the lease and the program requirements, pay its share of rent on time, maintain the unit in good condition and notify the PHA of any changes in income or family composition.

Landlord's Obligations: The role of the landlord in the voucher program is to provide decent, safe, and sanitary housing to a tenant at a reasonable rent. The dwelling unit must pass the program's housing quality standards and be maintained up to those standards as long as the owner receives housing assistance payments. In addition, the landlord is expected to provide the

services agreed to as part of the lease signed with the tenant and the contract signed with the PHA.

Housing Authority's Obligations: The PHA administers the voucher program locally. The PHA provides a family with the housing assistance that enables the family to seek out suitable housing and the PHA enters into a contract with the landlord to provide housing assistance payments on behalf of the family. If the landlord fails to meet the owner's obligations under the lease, the PHA has the right to terminate assistance payments. The PHA must reexamine the family's income and composition at least annually and must inspect each unit at least annually to ensure that it meets minimum housing quality standards.

HUD's Role: To cover the cost of the program, HUD provides funds to allow PHAs to make housing assistance payments on behalf of the families. HUD also pays the PHA a fee for the costs of administering the program. When additional funds become available to assist new families, HUD invites PHAs to submit applications for funds for additional housing vouchers. Applications are then reviewed and funds awarded to the selected PHAs on a competitive basis. HUD monitors PHA administration of the program to ensure program rules are properly followed.

Ok, now that I know what the programs are – what are the strings? Or are there any?

RENTAL AGREEMENTS

This section will provide you with some of the issues related to subsidized rental agreements and eviction. There are some changes in how you deal with residents who have some form of subsidized rent. We hope you will find this information useful.

In Public Housing, each landlord is responsible for providing a rental agreement with the tenant. There are few restrictions on what can be included in this lease. In privately owned subsidized housing, a model lease is provided.

Some of the clauses in the model lease:

- **Charges for Late Payments & Returned Checks**: If the Tenant does not pay the full amount of the rent shown in paragraph 3 by the end of the 5th day of the month, the Landlord may collect a fee of $5 on the 6th day of the month. Thereafter, the Landlord may collect $1 for each additional day the rent remains unpaid during the month it is due. The Landlord may not terminate this Agreement for failure to pay late charges, but may terminate this Agreement for non-payment of rent, as explained in paragraph 23. The Landlord may collect a fee of $_____ on the second or any additional time a check is not honored for payment (bounces). The charges discussed in this paragraph are in addition to the regular monthly rent payable by the Tenant.
- **Maintenance**: The LANDLORD agrees to comply with the requirement of all applicable Federal, State, and local laws, including health, housing and building codes and to deliver and maintain the premises in safe, sanitary and decent condition.
- **Alterations**: No alteration, addition, or improvements shall be made in or to the premises without the prior consent of the LANDLORD in writing. The LANDORD must consent to reasonable modifications needed to permit a handicapped person full enjoyment of the premises as required by the Fair Housing Act. The LANDLORD will make reasonable alterations, additions or improvements if necessary to accommodate the TENANT as required by Section 504 (24 CFR Part 8).
- **General Restrictions**: The Tenant must live in the unit and the unit must be the Tenant's only place of residence. The Tenant shall use the premises only as a private dwelling for himself/herself and the individuals listed on the Certification and Recertification of Tenant Eligibility. The Tenant agrees to permit other individuals to reside in the unit only after obtaining the prior written approval of the Landlord. The Tenant agrees not to:
  a. sublet or assign the unit, or any part of the unit;
  b. use the unit for unlawful purposes;
  c. engage in or permit unlawful activities in the unit, in the common areas or on the project grounds;

d. have pets or animals of any kind in the unit without the prior written permission of the Landlord; or
e. make or permit noises or acts that will disturb the rights or comfort of neighbors. The Tenant agrees to keep the volume of any radio, phonograph, television or musical instrument at a level which will not disturb the neighbors.

- **Rules**: The Tenant agrees to obey the House Rules which are Attachment No. 3 to this Agreement. The Tenant agrees to obey additional rules established after the effective date of this Agreement if:
  a. the rules are reasonably related to the safety, care and cleanliness of the building and the safety, comfort and convenience of the Tenants; and
  b. the Tenant receives written notice of the proposed rule at least 30 days before the rule is enforced.

As you can see, these are mostly normal conditions any landlord would want in their lease. If the owner chooses not to use the model lease, there are certain mandatory and prohibited clauses that must be included in the lease they use. These are listed below:

Mandatory Lease Provisions: (Section 8 housing)

1. **Relates to changes in the tenant's rent and their subsidy calculation.**
2. **Deals with annual recertification of their income.**
3. **Deals with interim recertifications if their income should change during the year.** Any changes in income over $40 are to be reported to the subsidy agency.
4. **Addresses the reasons for removal of subsidy**.
5. **Addresses tenants obligation to repay any overpaid subsidy**.
6. **Addresses discrimination prohibited.**
7. **Change in Rental Agreement**: The Landlord may, with the prior approval of HUD, change the terms and conditions of this Agreement. Any changes will become effective only at the end of the initial term or a successive term. The Landlord must notify the Tenant of any change and must offer the Tenant a new Agreement or an amendment to the existing Agreement. The Tenant must receive the notice at least 60 days before the proposed effective date of the change. The Tenant may accept the changed terms and conditions by signing the new Agreement or the amendment to the existing Agreement and returning it to the Landlord. The Tenant may reject the changed terms and conditions by giving the Landlord written notice that he/she intends to terminate the tenancy. The Tenant must give such notice at least 30 days before the proposed change will go into effect. If the Tenant does not accept the amended agreement, the Landlord may require the Tenant to move from the project, as provided in paragraph 23.
8. **Termination of Tenancy**:
   a. To terminate this Agreement, the Tenant must give the Landlord 30-days written notice before moving from the unit. If the Tenant does not give the full 30-day notice, the Tenant shall be liable for rent up to the end of the 30 days for which notice was required or to the date the unit is re-rented, whichever date comes first.
   b. Any termination of this Agreement by the Landlord must be carried out in

accordance with HUD regulations, State and local law, and the terms of this Agreement. The Landlord may terminate this Agreement only for:

- the Tenant's material noncompliance with the terms of this Agreement;
- the Tenant's material failure to carry out obligations under any State Landlord and Tenant Act; or
- criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or near such premises, engaged in by a tenant, any member of the tenant's household, or any guest or other person under the tenant's control; or
- other good cause, which includes, but is not limited to, the Tenant's refusal to accept the Landlord's proposed change to this Agreement. Terminations for "other good cause" may only be effective as of the end of any initial or successive term.

The term material noncompliance with the lease includes: (1) one or more substantial violations of the lease; (2) repeated minor violations of the lease that: (a) disrupt the livability of the project, (b) adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities, (c) interfere with the management of the project, or (d) have an adverse financial effect on the project; (3) failure of the tenant to timely supply all required information on the income and composition, or eligibility factors, of the tenant household (including, but not limited to, failure to meet the disclosure and verification requirements for Social Security Numbers, or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies), or to knowingly provide incomplete or inaccurate information; and (4) non-payment of rent or any other financial obligation due under the lease beyond any grace period permitted under State law. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law constitutes a minor violation.

c. If the Landlord proposes to terminate this Agreement, the Landlord agrees to give the Tenant written notice of the proposed termination. If the Landlord is terminating this agreement for "other good cause," the termination notice must be mailed to the Tenant and hand-delivered to the dwelling unit in the manner required by HUD at least 30 days before the date the Tenant will be required to move from the unit. Notices of proposed termination for other reasons must be given in accordance with any time frames set forth in State and local law. Any HUD-required notice period may run concurrently with any notice period required by State or local law. All termination notices must:

- specify the date this Agreement will be terminated;
- state the grounds for termination with enough detail for the Tenant to prepare a defense;
- advise the Tenant that he/she has 10 days within which to discuss the proposed termination of tenancy with the Landlord. The 10-day period will begin on the earlier of the date the notice was hand-delivered to the unit or the day after the date the notice is mailed. If the Tenant requests the meeting, the Landlord agrees to discuss the proposed termination with the Tenant; and
- advise the Tenant of his/her right to defend the action in court.

d. If an eviction is initiated, the Landlord agrees to rely only upon those grounds cited in the termination notice required by paragraph (c).

Again, as you can see, most of these mandated provisions relate to the subsidy portion of the rent and eligibility.

What fees and charges other than rent can I collect?

1. Late payment of rent and returned check charges
2. Utilities and services if paid by landlord
3. Security deposits
4. Key and Lock
5. Damages
6. Additional utility fee (for example: if you rent them a refrigerator or window air conditioner, etc.)

Can I set House Rules? YES

The Landlord may set house rules and mention them in the lease. A 30 day notice is required to establish or change House Rules. The house rules should be a separate document that is mentioned in the lease. That way, if you have to change office hours, pool rules, etc., you don't have to keep updating your lease.

Can I restrict pets? Yes, but....

For regular subsidized apartment communities, owners can deny pets as a regular policy. But service animals that assist persons with disabilities are considered to be auxiliary aids and are exempt from the pet policy and from any refundable pet deposit. Examples include guide dogs for persons with vision impairments, hearing dogs for persons with hearing impairments, and emotional assistance animals for persons with chronic mental illness.

If an owner chooses to allow pets, they may wish to consider both mandatory and discretionary pet rules. Mandatory rules could include requiring inoculations, setting sanitary standards, requiring pet restraint and registration by the owner. Discretionary rules you might consider include establishing pet density requirement, a required pet deposit (can ask up to $300 per pet), establish a waste removal charge, standards of pet care, require a pet license and/or allow temporary pets.

What About Drug and Criminal Activity?

HUD is in the process of updating it's "model lease". The following are provisions that are being considered:

1. Termination of Tenancy – termination reasons to include...
    a. Drug related criminal activity engaged in, on or near the premises, by any tenant, household member, or guest and any such activity engaged in or on the premises by any person under the tenant's control;

b. A determination made by the landlord that a household member is illegally using a drug;
c. A determination made by the landlord that a pattern of illegal use of a drug interferes with health, safety, peaceful enjoyment of the premises by other residents;
d. Criminal activity by a tenant, household member, guest or other person under tenant's control that:
   1. threatens the health, safety, peaceful enjoyment of the premises by other residents including property management staff residing on the premises; OR
   2. persons residing in the immediate vicinity of the premises.
e. If the tenant is fleeing to avoid prosecution, custody or confinement after conviction, for a crime, or attempt to commit a crime that is a felony or high misdemeanor;
f. If the tenant is violating a condition of parole imposed under Federal or state law;
g. A determination made by the landlord that a household member's abuse or pattern of abuse of alcohol threatens the health, safety or right to peaceful enjoyment of other residents;
h. If the landlord determines that the tenant, any member of the tenant's household, a guest or other person under the tenant's control has engaged in the criminal activity, regardless of whether the tenant, any member of the tenant's household, a guest or other person under the tenant's control has been attested or convicted for such activity.

EVICTION

What about eviction? I hear this is where "subsidized tenants get you"?

There are provisions which related to Termination of Tenancy:

a. To terminate this Agreement, the Tenant must give the Landlord 30-days written notice before moving from the unit. If the Tenant does not give the full 30-day notice, the Tenant shall be liable for rent up to the end of the 30 days for which notice was required or to the date the unit is re-rented, whichever date comes first. **This is regardless of whether the tenant signed a year lease or not.**

b. Any termination of this Agreement by the Landlord must be carried out in accordance with HUD regulations, State and local law, and the terms of this Agreement. The Landlord may terminate this Agreement only for:

o the Tenant's material noncompliance with the terms of this Agreement;

o the Tenant's material failure to carry out obligations under any State Landlord and Tenant Act; or

o* criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or near such premises, engaged in by a tenant, any member of the tenant's household, or any guest or other person under the tenant's control; or

o other good cause, which includes, but is not limited to, the Tenant's refusal to accept the Landlord's proposed change to this Agreement. Terminations for "other good cause" may only be effective as of the end of any initial or successive term.

The term material noncompliance with the lease includes: (1) one or more substantial violations of the lease; (2) repeated minor violations of the lease that: (a) disrupt the livability of the project, (b) adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities, (c) interfere with the management of the project, or (d) have an adverse financial effect on the project; (3) failure of the tenant to timely supply all required information on the income and composition, or eligibility factors, of the tenant household (including, but not limited to, failure to meet the disclosure and verification requirements for Social Security Numbers, or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies), or to knowingly provide incomplete or inaccurate information; and (4) non-payment of rent or any other financial obligation due under the lease beyond any grace period permitted under State law. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law constitutes a minor violation.

c. If the Landlord proposes to terminate this Agreement, the Landlord agrees to give the Tenant written notice of the proposed termination. If the Landlord is terminating this agreement for "other good cause," the termination notice must be mailed to the Tenant and hand-delivered to the dwelling unit in the manner required by HUD at least 30 days before the date the Tenant will be required to move from the unit. Notices of proposed termination for other reasons must be given in accordance with any time frames set forth in State and local law. Any HUD-required notice period may run concurrently with any notice period required by State or local law. All termination notices must:

o specify the date this Agreement will be terminated;

o state the grounds for termination with enough detail for the Tenant to prepare a defense;

o advise the Tenant that he/she has 10 days within which to discuss the proposed termination of tenancy with the Landlord. The 10-day period will begin on the earlier of the date the notice was hand-delivered to the unit or the day after the date the notice is mailed. If the Tenant requests the meeting, the Landlord agrees to discuss the proposed termination with the Tenant; and

o advise the Tenant of his/her right to defend the action in court.

d. If an eviction is initiated, the Landlord agrees to rely only upon those grounds cited in the termination notice required by paragraph (c).

Landlords who rent to tenants who are utilizing Section 8 vouchers or certificates must also send a copy of any eviction notice to the Housing Agency who handles their subsidy.

Other important provisions:

- **Hazards**: The Tenant shall not undertake, or permit his/her family or guests to undertake, any hazardous acts or do anything that will increase the project's insurance premiums. Such action constitutes a material non-compliance. If the unit is damaged by fire, wind, or rain to the extent that the unit cannot be lived in and the damage is not caused or made worse by the Tenant, the Tenant will be responsible for rent only up to the date of the destruction. Additional rent will not accrue until the unit has been repaired to a livable condition.

- **Penalties for knowingly giving the Landlord false information** regarding income information or other factors considered in determining Tenant's eligibility and rent is a material noncompliance with the lease subject to termination of tenancy. In addition, the Tenant could become subject to penalties available under Federal law. Those penalties include fines up to $10,000 and imprisonment for up to five years.

Notice to Cure

Unlike conventional leases, subsidized tenants do have one additional item which impacts eviction. The Landlord agrees to give the Tenant written notice of the proposed termination (regardless of reason –nonpayment of rent or lease violation). The notice will advise the Tenant that, they have ten calendar days following the date of the notice were he/she may request to meet with the Landlord to discuss the proposed termination of assistance. If the Tenant requests a discussion of the proposed termination, the Landlord agrees to meet with the Tenant. This does not affect your eviction filing dates.

If you are interested in seeing the entire subsidized model lease, visit http://www.hudclips.org/subscriber/cgi/legis_run.cgi?legis_run and scroll down to Sample Model Lease.

If you should have any questions about the subsidized programs – please contact the agencies who oversee the program.